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No. 02-1624

In The
Supreme Court Of The United States

Elk Grove Unified School District
and David W. Gordon, Superintendent
Petitioners

v.

Michael A. Newdow, et al.
Respondents

On Writ of Certiorari to the
United States Court of Appeals for The Ninth Circuit

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS' POSITION

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December 19, 2003

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STATEMENT OF INTEREST[1]

This *amicus* has for many decades been actively concerned in matters of religion and the protestant church (from a layman's position), linguistics, and in the constitution. He has served in the military: three years as a private in the 101st Cavalry Division of the New York National Guard and three years in the Second World War as a desk officer dealing with our British, Russian, and Chinese allies in legal aspects of the exchange of technical information in the Army Air Force. In 1991 he compiled, and had published,*The Language of the Constitution, a Sourcebook* (foreword by Chief Justice Warren E. Burger, then Chairman of the Bicentennial Commission). Most of his professional life has been as a sole practitioner at the New York and Connecticut bars, after two years of public service in the early nineteen thirties in Governor Lehman's special investigation of organized crime in New York County. Matters of Episcopal Church organizations and activity have also been of prime interest, as have Criminal Law reform in New York.

The only question herein discussed: whether the words "under God," as added by Congress to the Pledge of Allegiance in 1954 by Act of Congress, should be ruled unconstitutional.

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[1] I have been the sole author of this brief and no monetary contribution has been made to me for its preparation or submission. All parties have granted consent to the submission of this brief. The letters of consent have been filed with the Clerk.

SUMMARY OF ARGUMENT

"Under God," as added to the Pledge of Allegiance, "establishes" no religion within the meaning of the first Amendment. A review of official documentary material of the Army and Navy show that godliness was in fact a basic ingredient in both services: in the Army, since at least the beginning of the Second World War and in the Navy, since 1775, a quarter century before we devised a constitution and became a nation.

God is the foundation of Christianity, Judaism, and Mohammedism, the chief monotheistic, "one God" religions.

You cannot have a religion without God, but you can have God without religion. Christian bibles recognize this with the opening lines, "In the beginning, God created the earth" — which was a void and might have remained so until now but for the evolution of mankind beginning with the Jewish religion; later with Moses and, in more recent times, with Mohammed (570-632). This was recognized by James Madison, progenitor of the first amendment, when he initiated the prohibition of having any one religion "established" as it had been in England where, if you did not belong to the Episcopacy, you were a "dissenter."

ARGUMENT

The Doxology says: "Praise God from whom all blessings flow."

The first four words of the bible are "In the beginning, God . . ." People did not come until later.

The concept of "God" is an *ingredient* in all religions, but that does not make God a religion. As defined in the 1947 edition of Webster's International Dictionary, God is , "3. The Supreme Being; the eternal Creator and Sovereign of the Universe." Page 1072

George C. Marshall, Chief of Staff during the Second World War, said, "It is morale that wins the victory."[2]

When General Douglas MacArthur returned to the Philippines after being driven out by the Japanese in an earlier phase of the war, he announced, "I have returned. By the Grace of Almighty God, our forces stand again on Philippine soil." (October 20, 1944)[3]

[2] John Bartlett, *Familiar Quotations*, 15th Ed., Little, Brown & Co. (1980), p. 771, note 13.
[3] Ibid, note 4

A recent Navy Warfare Publication (NWP 1-05, August 2003) states:

1.1 MISSION

The United States Navy Chaplain Corps supports the foundational right for religion and the religious beliefs of personnel. This due consideration, born of Congress to care for the religious and spiritual needs of sailors, has been the Corps' obligation since 1775. Commanders have a duty and obligation to provide for and accommodate the free exercise of religion, and the Chaplain Corps is charged with carrying out that duty.

Historically, recognition has been given to the importance and influence of religious beliefs among operational forces and forces in harm's way. There is, in effect, a positive dynamic on the moral and emotional well-being of military personnel when afforded the free exercise of religion. It is imperative, therefore, that the religious ministry (RM) needs of sailors are given utmost recognition and respect. Furthermore, there is a growing recognition for the role of chaplains to provide information to aid commanders in

understanding indigenous religious dynamics and their influences on operations.

The Religious Ministry Team (RMT), comprising one or more chaplains and one or more religious program specialists (RPs), provides RM to meet the religious needs of sailors, thereby becoming a force preserver. In the same way, the RMT can help the commander to understand the influence of religion on the international community.

1.4.1 Free Exercise of Religion

The First Amendment of the United States Constitution guarantees the free exercise of religion. Accordingly, the U.S. Navy places a high value on the rights of Navy personnel to observe the tenets of their respective religious faiths. As commissioned officers, chaplains assist and advise commanders in accommodating the free exercise of religion. When orders are issued to accomplish an important national objective, however, commanders may incidentally inhibit religious practice as long as it is reasonable, and interference is important to accomplishing the mission.

1.5.1 United States Navy Chaplain Corps

The U.S. Navy Chaplain Corps traces its inception to the Second Article of Navy Regulations adopted on 28 November 1775 by the Continental Congress. This event occurred prior to the signing of the Declaration of Independence on 4 July 1776, or the Constitution on 17 September 1787. From the outset of the Continental Navy, due consideration was given to divine services and the placement of chaplains aboard ships. This act provided a place for religion and chaplains in the Navy.

1.7 COMMAND ROLE AND RESPONSIBILITY

1.7.1 Providing for the Free Exercise of Religion

. . . In providing for the free exercise of religion, RM programs support good order and discipline by ensuring that (1) the activity is not in violation of other directives, (2) the activity is not performed in isolation or secrecy, and (3) the activity is not contrary to Navy core values.[4]

[4] Navy Warfare Publication, *Religious Ministry in the U.S. Navy, NWP 1-05*, August 2003 Ed., Dept. of the Navy, Office of the Chief of Naval Operations.

"God" became a designation familiar to millions in the armed services long before its inclusion in the Pledge of Allegiance in 1954.

The following references to "God" have been collated from *Song and Service Book for Ship and Field, Army and Navy*, 1942 (192 pages). Ten million (10,000,000) pocket-size copies were made for distribution to service men and women during the Second World War.[5] They contain three religious services for each of the two largest segments of Christianity and the one Jewish segment. There is no breakdown for sects; only for the religions of which sects are a part. By far the most repetitive word, throughout, is "God."

The book is dedicated "to the Glory of Almighty God" by the Chief Chaplains of the Navy Department, the War Department, and the U. S. Army.

Hymns begin with "Praise God, from Whom all Blessings flow" through "Praise Father, Son, and Holy Ghost" on page 5 in the Order for Protestant Service, followed by the Catholic sections (Mass of Christ the King on page 37), and by the Order for Jewish Service on page 69.

[5] Robert L. Gushwa, *The Best and Worst of Times, The United States Army Chaplaincy, 1920-1945*, Vol. IV, Office of the Chief of Chaplains, Department of the Army, Washington, DC (1977), p. 172.

Each section is followed by Hymns and Songs, 115 pages in all. All three sections are replete with references to God. These books are not readily available; twelve copies have been made and will be offered forthwith for lodging in the Clerk's Office in accordance with Rule 32 (3).

Among the hymns are:

1. "O Beautiful for Spacious Skies" by Katharine Lee Bates and Samuel A. Ward (#122 on page 143) with reference to God in each of the four stanzas

2. "God Bless America," written by Irving Berlin and introduced by Kate Smith (#143 on page 165)

3. "My Country, 'tis of Thee" (#144 on page 166) in which the last stanza begins and ends with reference to God.

There are hundreds more references that refer to God on pages 77 through 163, to be reviewed page by page, or to be thumbed at random.[6]

[6] *Song and Service Book for Ship and Field,* Army and Navy, Ivan L. Bennett, Ed, U.S. Gov't Printing Office (1942)

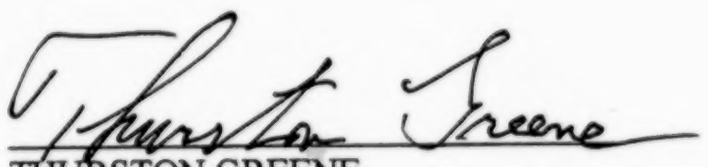
CONCLUSION

This is *not* a judicable controversy.

An affirmance would create chaos because its side effects, especially on other governmental instrumentalities, would be unpredictable.

A movement for a constitutional amendment would be started. Chaos would ensue until passage

Respectfully submitted:



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